United Nations A/HRC/35/23

General Assembly

Distr.: General
6 June 2017

Original: English

Human Rights Council
Thirty-fifth session
6-23 June 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the first report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, submitted pursuant to Council resolution 26/12. In the report, the Special Rapporteur considers key elements of a gender-sensitive perspective to the mandate, in the interests of strengthening an inclusive application of critical norms and standards related to the right to life. These elements include consideration of the impact of gender identity and expression, intersecting with other identities, on the risks factors to killings or death, the degree of predictability of harm and States' implementation of its due diligence obligations. Applying gender lenses to the notion of arbitrariness, the Special Rapporteur highlights that gender-based killings — when committed by non-State actors — may constitute arbitrary killings. It also shows that violations of the right to life stem not only from an intentional act of deprivation of life by the State or a non-State actor, but also from the deprivation of basic conditions that guarantee life, such as access to essential health care. Thus, a gender-sensitive approach to the mandate reveals that arbitrary deprivation of life may result from systemic discrimination that must be remedied for all people to enjoy equal rights to life.

* The present report was submitted after the deadline in order to reflect the most recent developments.

GE.17-09011(E)

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I. Introduction

1. The present report is submitted to the Human Rights Council in accordance with resolution 26/12. It is the first to the Council by Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions, since she took up her functions on 1 August 2016. She succeeded Christof Heyns, who completed his six-year term as Special Rapporteur on 31 July 2016.

2. In preparation of the present report, on 18 November 2016, the Special Rapporteur issued a call for submissions to States, academia and civil society on the topic of "a gender-sensitive approach to extrajudicial, summary or arbitrary killings". That was followed on 30 March 2017 by the convening in Geneva of an expert meeting on the same topic. She wishes to express her sincere appreciation to all those who submitted responses and participated in the event.[1]

II. Activities of the Special Rapporteur

3. The present report covers activities undertaken by the Special Rapporteur since the submission of the previous report to the Human Rights Council (A/HRC/32/39) as far as they have not been included in the report to the General Assembly at its seventy-first session (A/71/372).

A. Communications

4. Observations on the communications sent by the Special Rapporteur between 1 March 2016 and 28 February 2017 and replies received between 1 May 2016 and 30 April 2017 are contained in document A/HRC/35/23/Add.2.

B. Press releases

5. During the reporting period, the former and current Special Rapporteur issued, alone or jointly, over 30 press statements, in which they raised thematic and country specific issues, including: the imposition of the death penalty, including on juvenile offenders; unlawful killings in relation to the war on drugs; death threats against and unlawful killings of human rights defenders; violations of the right to life of persons with disabilities; excessive use of force by security forces; the protection of civilians in conflict situations; and the need for prompt, thorough and impartial investigations into all cases of suspected unlawful killings.[2]

C. Meetings and other activities

6. All activities conducted by the Special Rapporteur between 1 April and 31 July 2016 are included in the above-mentioned report to the General Assembly.

7. Between 1 August 2016 and 28 February 2017, the Special Rapporteur participated in several meetings and events, including: a meeting convened in Seoul by the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration; a meeting organized by the University of Essex, United Kingdom of Great Britain and Northern Ireland, on investigating human rights violations in armed conflicts; and a regional consultation on drug policy in South-East Asia, convened in Bangkok by the International Drug Policy Consortium.

[1] Particular thanks goes to the Geneva Academy for co-organizing the expert meeting.

[2] For more information, see www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Summ_Executions.

8. The Special Rapporteur was the keynote speaker at an event held in New York on the death penalty and terrorism, organized by the organizations Parliamentarians for Global Action and World Coalition against the Death Penalty. In addition, she participated in side events organized via video link in the margins of the thirty-fourth session of the Human Rights Council and the Fifth Review Conference of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Convention on Certain Conventional Weapons), held in Geneva.

III. Gender-sensitive approach to extrajudicial, summary or arbitrary killings

A. Introduction

9. The mandate on extrajudicial, summary or arbitrary killings has evolved over the years through various resolutions of the General Assembly and the Human Rights Commission and Council, and in response to violations of the right to life that member States have determined required a response.[3]

10. No international treaty explicitly defines extrajudicial, summary or arbitrary executions. However, such violations of the right to life have been commonly characterized as falling within the "public" domain, i.e., the domain of the State and its institutions, and understood to encompass killings involving State officials or private actors connected to the State, and to include armed conflict situations.[4]

11. While many steps have been taken over the past 20 years to broaden the reach and relevance of international human rights law, including by special procedure mandate holders, historically common characterizations have worked to exclude gender-related killings, which take place mainly in the so-called "private" sphere. When, in its application, the human rights framework fails to regard equally all loss of life, the consequences may be — however unintentionally — the perception that some arbitrary loss of life is of a lesser degree of gravity than other instances of arbitrary death.

12. In its resolution 71/198, adopted in December 2016, on extrajudicial, summary or arbitrary executions, the General Assembly sought to offer a more inclusive perspective. It acknowledged the importance of gender equality in the 2030 Agenda for Sustainable Development and encouraged the systematic mainstreaming of a gender perspective. The Assembly recognized that women and girls are disproportionately affected by conflict and called upon States to investigate all killings, including killings of persons because of their sexual orientation or gender identity.

13. This suggests that, rather than focusing on whether the perpetrator is a State or a non-State actor, "what is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible".[5]

14. A gender-sensitive perspective seeks to bring gender-based executions squarely within the mandate, including by revealing systemic discrimination that must be remedied for all people to enjoy equal rights. Acknowledging that gender-based killings may

[3] See E/CN.4/2005/7, paras. 5-11 and 45.

[4] For more information, see International Commission of Jurists, *Enforced Disappearances and Extrajudicial Executions: Investigation and Sanction, A Practitioners Guide* (Geneva, 2015), p. 57. Available from www.icj.org/wp-content/uploads/2015/12/Universal-Enforced-Disappearance-and-Extrajudicial-Execution-PGNo9-Publications-Practitioners-guide-series-2015-ENG.pdf.

[5] See *Velasquez Rodriguez v. Honduras* (Judgment), Inter-American Court of Human Rights, 29 July 1988, Series C No. 4, para. 173.

constitute arbitrary killings, even in certain circumstances when committed by non-State actors, reinforces rights-based claims to redress them.[6]

15. The purpose thus of the present report is to contribute to a comprehensive application of the mandate of the Special Rapporteur that is sensitive to and revealing of the ways in which gender interacts with violations of the right to life. The Special Rapporteur fully appreciates the many steps already taken in this regard, including through the mandate. Her effort here is to elaborate further on those, in the interests of the fairest and most inclusive application of these critical standards.

B. Definitions and scope of the report

16. In the present report, gender is understood to refer to the social attributes and opportunities associated with being male and female,[7] an evolving social and ideological construct that justifies inequality and a way of categorizing, ordering and symbolizing power relations.

17. Gender is not synonymous with or equivalent to sex. Instead, gender helps us to question that which we otherwise take for granted, including the category of sex.

18. Medical science establishes, for example, that there are sex characteristics, which, either at birth or in developmental stages, do not fit the medical or societal standards of binary biological sex with regards to sexual and reproductive anatomy. Some countries, furthermore, have long recognized a third sex (e.g. Bangladesh, India and Pakistan).

19. In its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights observed that gender identity is recognized as among the prohibited grounds of discrimination[8] and can be defined as each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.[9]

20. As emphasized by a range of experts, gender never stands alone as a sole factor structuring power within a society.[10] The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, stated that "the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them".[11]

21. The notion of intersectionality seeks to capture this interaction between various forms and sources of systems of power and discrimination. As noted in the report of the Expert Group Meeting on gender and racial discrimination, held in Zagreb in 2000,[12] "it

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[6] Even when a gender-related killing does not meet that threshold of arbitrary killing, it still triggers the responsibility of the State under international human rights law, as highlighted in the present report.

[7] See www.un.org/womenwatch/osagi/conceptsandefinitions.htm.

[8] See E/C.12/GC/20, para. 32.

[9] See "The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity" (March 2007), p. 8. Available from www.glen.ie/attachments/The_Yogyakarta_Principles.pdf.

[10] See Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women", *Stanford Law Review*, vol. 43, No. 6 (July 1991), pp. 1241-1299; and Carol Cohn, *Women and Wars: Contested Histories, Uncertain Futures* (Cambridge, Polity Press, 2013).

[11] See CEDAW/C/GC/28, para. 18.

[12] Available from http://www.un.org/womenwatch/daw/csw/genrac/report.htm.

addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing effectively to create a dynamic of disempowerment".[13]

22. For the purposes of the present report, gender is understood to produce distinct vulnerabilities and risks linked to the way societies organize male and female roles and exclude those who transgress such roles. Intersecting with other identities — such as race, ethnicity, disability and age, which also organize societies — gender heightens, or reduces, risks and vulnerabilities to human rights violations in general, and killings in particular.

23. While a gender-sensitive approach may be adopted to better understand violations committed against men and boys, in the present report, the Special Rapporteur focuses on gender-based killings of women and girls, and killings committed on the basis of gender identity and gender expression,[14] such as against lesbian, gay, bisexual, transgender, questioning and intersex persons.

C. Right to life, arbitrary killings and deprivation of life

24. Article 6 of the International Covenant on Civil and Political Rights recognizes the inherent right of every person to life and not to be arbitrarily deprived of life.

25. In accordance with articles 2 of the Universal Declaration of Human Rights and 26 of the Covenant, everyone is entitled to the protection of the right to life without distinction or discrimination of any kind, and all persons shall be guaranteed equal and effective access to remedies for the violation of that right.

26. The right not to be arbitrarily deprived of one's life is recognized as part of customary international law and the general principles of law, and is also recognized as a *jus cogens* norm, universally binding at all times.

27. There is, to date, no standardized interpretation of the meaning of "arbitrary",[15] although at least six characteristics may be extrapolated from various legal sources.

28. First, arbitrariness may have both a procedural and a substantive component, as reflected in the case law related to the use of force and the death penalty,[16] for instance.

29. Second, while arbitrariness may not only be equated with "against the law", "a deprivation of life will be deemed arbitrary if it is impermissible under international law, or under more protective domestic law provisions".[17]

30. Third, arbitrariness may be inferred from laws and practices, which violate the principle of non-discrimination. This was made particularly clear by the African Commission on Human and Peoples' Rights in paragraph 12 of its general comment No. 3 on the right to life, in which the Commission states that "any deprivation of life resulting from a violation of the procedural or substantive safeguards in the African Charter,

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[13] See also Office of the United Nations High Commissioner for Human Rights and United Nations Entity for Gender Equality and the Empowerment of Women, *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)*, pp. 43-45. Available from http://www.un.org/en/women/endviolence/pdf/LatinAmericanProtocolForInvestigationOfFemicide.pdf.

[14] In its "Policy Paper on Sexual and Gender-based Crimes" (2014), the Office of the Prosecutor of the International Criminal Court defines gender-based crimes as "those committed against persons, whether male or female, because of their sex and/or socially constructed gender roles. Gender-based crimes are not always manifested as a form of sexual violence. They may include non-sexual attacks on women and girls, and men and boys, because of their gender". See www.icc-cpi.int/iccdocs/otp/otp-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf.

[15] See forthcoming Human Rights Committee General Comment on the Right to Life.

[16] See A/HRC/4/20, para. 53; and A/67/275, para. 35.

[17] See African Commission on Human and Peoples' Rights, general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4). Available from www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_english.pdf.

including on the basis of discriminatory grounds or practices, is arbitrary and as a result unlawful".

31. For instance, the death penalty must not be imposed in a discriminatory manner.[18] Data about the disproportionate presence on death row of persons of a certain race or ethnic group may suggest systemic biases.

32. The element of non-discrimination applies both procedurally and substantively. Holders of the mandate on extrajudicial, summary or arbitrary executions have long argued that the imposition of the death penalty amounts to an arbitrary killing in cases where the courts have ignored essential facts of a capital defendant's case. This should logically include a long history of domestic violence, including because of larger social patterns of gender inequality.[19] Women facing capital prosecution arising out of domestic abuse suffer from gender-based oppression on multiple levels. For instance, it is exceedingly rare for domestic abuse to be treated as a mitigating factor during capital sentencing proceedings. Even in those countries with discretionary capital sentencing, courts often ignore or discount the significance of gender-based violence.

33. Fourth, arbitrariness has been interpreted to include elements of inappropriateness, injustice and lack of predictability[20] and due process of law,[21] as well as elements of reasonableness, necessity and proportionality.[22]

34. Fifth, "deliberate intent" on the part of the State is not required for a killing or a deprivation of life to be deemed 'arbitrary'. Quite the opposite: killings in circumstances of unnecessary or disproportionate excessive use of force by the police are likely to be arbitrary, even though the police may not have killed intentionally.

35. Sixth, the safeguards against arbitrary deprivation of life apply to killings by non-State actors. The Human Rights Committee, in paragraph 3 of its general comment No. 6 (1982) on the right to life, noted that it considers article 6 of the International Covenant on Civil and Political Rights to include the obligation of States parties to "take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces". In the famous "Cotton Field" decision,[23] the Inter-American Court on Human Rights noted the existence of State responsibility for killings by private individuals, which are not adequately prevented, investigated or prosecuted by the authorities. It also underscored that these responsibilities are heightened when an observable pattern has been overlooked or ignored, such as is often the case with gender-based violence, femicide, or harmful practices.[24]

D. Gender-sensitive approach to States' obligation to respect the right to life

36. States must respect, protect and fulfil human rights. Under the obligation to respect, States must respect the right to life and not deprive any person of their life arbitrarily, including in detention or through excessive use of force, for instance.

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[18] See A/70/304, sect. IV. A.

[19] Cornell University, Cornell Center on the Death Penalty Worldwide, Submission to the Special Rapporteur, January 2017.

[20] See communication No. 305/1988, *Van Alphen v. The Netherlands*, Views adopted on 23 July 1990, para. 5.8.

[21] Ibid. See also communications No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.1.

[22] See African Commission on Human and Peoples' Rights, general comment No. 3 (footnote 17 above).

[23] See Inter-American Court of Human Rights, *González et al. ("Cotton Field") v. Mexico* (Judgment), 16 November 2009.

[24] See also African Commission on Human and Peoples' Rights, general comment No. 3 (footnote 17 above), paras. 38 and 39.

37. When depriving an individual of their liberty, States are held to higher level of diligence in protecting that individual's rights. If an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility, including in situations where the prisoner has committed suicide.[25]

38. States have an obligation to protect the right to life of women when they exercise custody or control over women. A gender-sensitive approach to a State's obligation in this regard is set out by the General Assembly in its resolution 61/143, in which it calls on Governments to take positive measures to address structural causes of violence against women in institutions or in detention,[26] and in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

39. Respect for the right to life and prevention of arbitrary deprivation of life while in custody go beyond managing the power imbalance in the relationship between prisoners and police officers. It extends to managing a prisoner's gender-based vulnerability and associated risks vis-à-vis other prisoners and their conditions of incarceration more generally.

40. The extent of State obligations may be illustrated with the examples below.

Women facing the death penalty

41. Although precise figures on the imposition and implementation of the death penalty for women worldwide are difficult to obtain, a 2017 academic study suggests that women make up less than 5 per cent of the world's death row population and account for less than 5 per cent of the world's executions. At least 800 women are known to be currently on death row around the world.[27]

42. In many cases, women have been sentenced to death or subject to the death sentence for the crime of murder, often of close family members, but also for adultery,[28] same sex relationships and conduct and for drug-related offences, all of which do not meet the threshold of most serious crimes. Research on the death penalty applied to women has uncovered meaningful similarities among the women, across jurisdictions, including histories of long-term abuse and absence of effective assistance. Other common factors are economic dependence, fear of losing child custody, a culture of widespread tolerance of violence against women and the difficulties and stigma involved in obtaining a divorce.

43. Female migrant workers are particularly at risk. For instance, in the United Arab Emirates, death row statistics show that only 19 out of the approximately 200 people on death row are Emiratis, while 7 out of 8 women on death row are foreign domestic workers[29]. Migrant women facing the death penalty abroad are disproportionately, and thus arbitrarily, affected by the death penalty because of unfamiliarity with the laws and procedures, inadequate or low-quality legal representation, insufficient knowledge of the language and lack of a support network.[30] The implementation of the death penalty under these circumstances may be discriminatory and may constitute an arbitrary killing.

44. The Special Rapporteur has argued that the imposition of the death penalty against clear evidence of self-defence constitutes an arbitrary killing. This is particularly important for women charged with murder of their intimate partners, or others, when defending themselves.

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[25] See A/HRC/14/24/Add.1, paras. 89-90.
[26] See General Assembly resolution 61/143, para. 8 (*f*).
[27] See footnote 16 above.
[28] "Adultery" and other sexual offences should not be considered as crimes, pursuant to international human rights jurisprudence.
[29] See footnote 16 above.
[30] See A/70/304, p. 15.

Death penalty for same-sex relationships

45. The Islamic Republic of Iran, Saudi Arabia, the Sudan and Yemen have implemented the death penalty for same-sex behaviour.[31] When carried out, these sentences amount to arbitrary killings, for violating several substantive requirements related to the use of the death penalty, including non-discrimination and its imposition for crimes that do not qualify as most serious. While no cases of executions for consensual same-sex conduct have been confirmed in recent years, the mere existence of such laws reinforces stigma and fuels discrimination and violence against anyone perceived to be lesbian, gay, bisexual, transgender, questioning and intersex. Several human rights bodies have concluded that such punishment violates the provisions of the International Covenant on Civil and Political Rights.[32]

Transgender individuals in custody

46. Transgender women may be at heightened risk of violence and abuse when placed in male prisons or jails. According to the United Nations Office on Drugs and Crime (UNODC), when accommodated according to their birth gender, especially when male-to-female transgender prisoners are placed in men's prisons, transgender prisoners are often subjected to extreme physical, sexual and emotional abuse at the hands of inmates and penitentiary or police officials.[33] In some cases, transgender women in need of life-saving medical treatment have died owing to discrimination in and denial of access to essential services.[34] Advocates have warned of the risk of "mis-gendering" in prisons as a serious form of violence. Killings of transgender persons in conditions of detention that fail to take into account the risks they face, where these and the seriousness of the harm could be well foreseen owing to their gender expression, are arbitrary.

Gender-based killings in armed conflict situations

47. Rape and sexual violence tend to dominate gender-sensitive reports on armed conflicts, reflecting their widespread use as a weapon of war. The Independent International Commission of Inquiry on the Syrian Arab Republic has detailed a litany of gender-based atrocity crimes committed by most parties to the conflict in the Syrian Arab Republic, including rape and sexual torture of women and men and those suspected of being homosexual. The rule of Islamic State in Iraq and the Levant is grounded on a systematic discrimination against persons on the basis of gender and gender expression, which has included torturing and killing those they deem not in conformity with their understanding of gender roles and enslaving and systematically raping women and girls belonging to the Yazidi community.[35]

48. Other gender-based acts of violence and killings deserve additional attention. For instance, the patterns of harm from the use of explosive weapons in populated areas are shaped by issues of gender and age,[36] while the use of armed drones — and potentially autonomous weapon systems in the future — reinforce stereotypes of violent masculinities.[37]

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[31] C. Knight and K. Wilson, *Lesbian, Gay, Bisexual, and Trans People (LGBT) and the Criminal Justice System* (London, Palgrave Macmillan, 2016).

[32] See CCPR/C/MRT/CO/1, para. 8; E/C.12/IRN/CO/2, para. 7; A/HRC/30/18, para. 35.

[33] See www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

[34] See http://infocielo.com/nota/78127/una_nueva_muerte_de_una_mujer_trans_en_la_carcel_debido_a_condiciones_indignas/.

[35] See A/HRC/32/CRP.2, available from www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx.

[36] See M.H.-R. Hicks et al, "The Weapons That Kill Civilians — Deaths of Children and Noncombatants in Iraq, 2003-2008", *The New England Journal of Medicine*, 16 April 2009; and R. Moyes, "Impact of Explosive Weapons by Gender and Age – Iraq 2003-2011", research paper, Action on Armed Violence (2012).

[37] See R. Acheson, R. Moyes and T. Nash, "Sex and Drone Strikes: Gender and Identity in Targeting and Casualty Analysis", Reaching Critical Will and Article 36 (2014).

Secondary victims

49. Women are particularly affected by the extrajudicial killing of their partners and other family members. For instance, the Government of the Philippines war on drugs has resulted in a large number of killings, including reported extrajudicial killings and killings by "unknown assailants". As the majority of the victims are men, their female partners, by virtue too of their gender-based roles, are left to confront the associated stigma, fear, insecurity and economic deprivation, in addition to the burdens of identifying and burying their dead loved ones and seeking justice.

E. Gender-sensitive approach to States' obligation to protect the right to life

50. Under their obligation to protect, States must act with due diligence to protect against actions by non-State actors that may infringe on other persons' human rights. State responsibilities derive from failures to act, with "act" encompassing the institutions and the mechanisms to prevent and investigate violations, punish those responsible and provide compensation and reparation. States must thus exercise due diligence to prevent arbitrary deprivations of life, including where there is a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party.[38]

Femicide and killings on the basis of gender expression

51. Femicide, which constitutes perhaps the most prevalent form of violence against women and girls, is perpetrated in countries across the globe.

52. According to UNODC and academic research,[39] although homicide at the hands of an intimate partner affects people in all regions, it disproportionately affects women to the extent that, at the global level, almost half of female homicide victims are killed by their family members or intimate partners, whereas the equivalent figure for men is just over 5 per cent.[40] Such homicides are often the ultimate outcome of a failed societal response to intimate partner violence, including health and criminal justice services.[41]

53. Analysis by the Femicide Census in the United Kingdom has shown many significant similarities across settings, weapons used and relationship of the perpetrator to the victim. Women were shown to be at significant risk of being killed when separating from intimate partners or shortly thereafter.[42]

54. An intersectional approach to femicide reveals that the homicide rate among indigenous or aboriginal women and girls is much higher than national averages. For instance, in Canada, this is at least six times higher than that for all Canadian women.[43] In an extensive report, the Committee on the Elimination of Discrimination against Women highlighted the failure of the federal and provincial authorities in Canada to address underlying factors that put women and girls at risk, including discrimination, social and economic marginalization and inadequate access to safe, affordable housing.[44]

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[38] See CCPR/C/21/Rev.1/Add.13, para. 8.

[39] See Heidi Stöckl et al, "The global prevalence of intimate partner homicide: a systematic Review", *The Lancet*, vol. 382, pp. 859-865 (7 September 2013).

[40] See UNODC, *Global study on homicide* (Vienna, 2013). Available from www.unodc.org/documents/data-and-analysis/statistics/GSH2013/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.

[41] "Global prevalence of intimate partner homicide" (see footnote 38 above), p. 864

[42] See Femicide census, "Redefining an isolated incident" (2016). Available from https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2017/01/The-Femicide-Census-Jan-2017.pdf.

[43] See Z. Miladinovic and L. Mulligan, "Homicide in Canada, 2014" (Statistics Canada, 25 November 2015).

[44] See CEDAW/C/OP.8/CAN/1 and Inter-American Commission on Human Rights, "The Right to Truth in the Americas" (December 2014).

55. Women with disabilities worldwide experience domestic violence, including physical, sexual, emotional, psychological and financial abuse, at twice the rate of other women.[45] Girls with disabilities are also particularly at risk of infanticide "because their families are unwilling or lack the support to raise a girl with an impairment".[46]

56. Where data on killings on the basis of sexual identity or gender expression exist, they indicate a very high incidence of violence resulting in death. For instance, in the United States of America, in 2013, the majority of the victims of hate-related violence and homicides (72 per cent) were transgender women, and transgender women of colour were at the highest risk of homicide in the nation.[47] The Inter-American Commission on Human Rights reported 594 hate-related killings of lesbian, gay, bisexual, transgender and intersex persons in its 25 member States between January 2013 and March 2014.[48]

Due diligence obligations

57. The standard of due diligence requires States to act to prevent, investigate, punish and provide compensation for human rights violations, whether committed by State or non-State actors.[49] This standard, which applies both to the negative and the positive obligations of the State, is found in numerous international instruments and has been particularly well developed and elaborated upon in the context of violence against women and gender-based killings.[50]

58. Below are a number of elements of due diligence that are particularly highlighted.

Failure to act

59. A State may incur international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for gender-based violence, including acts of violence against women, a duty that may apply to actions committed by private actors in certain circumstances.[51]

Recognition of intersectionality

60. The international and regional systems have identified certain groups of women (for example, girl-children, women from ethnic, racial and minority groups and disabled women) as being at particular risk of violence owing to the multiple forms of discrimination they face.[52] This is also the case for lesbian, gay, bisexual, transgender, questioning and intersex persons. States must recognize this intersectionality and consider it in their policymaking.

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[45] See A/67/227, p. 31.

[46] See Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016) on women and girls with disabilities, para. 36, and A/HRC/20/5, para. 24.

[47] See www.hrc.org/resources/understanding-the-transgender-community.

[48] See Inter-American Commission on Human Rights "An Overview of Violence Against LGBTI Persons", available from www.oas.org/en/iachr/lgtbi/docs/Annex-Registry-Violence-LGBTI.pdf.

[49] See *Velasquez Rodriguez v. Honduras* (footnote 5 above).

[50] See Committee on the Elimination of Discrimination against Women, general recommendation No. 19 on violence against women; Declaration on the Elimination of Violence against Women, adopted by the General Assembly; and the Beijing Platform for Action.

[51] See Inter-American Court of Human Rights, Report No. 28/07, cases 12.496-12.498, *Claudia Ivette González and others* (Mexico), 9 March 2007; European Court of Human Rights, *Case of Opuz v. Turkey* (Judgment), application No. 33401/02; Committee on the Elimination of Discrimination against Women, communication No. 6/2005, *Fatma Yildirim v. Austria*, Views adopted on 6 August 2007; and article 5 of the Council of Europe Istanbul Convention.

[52] See *Jessica Lenahan (Gonzales) et al. v. United States*, merits report No. 80/11, case 12.626, para. 127. See also Human Rights Council resolution 14/12, tenth preambular paragraph; Inter-American Court of Human Rights, "Violence and Discrimination against Women in the Armed Conflict in Colombia", OEA/Ser/L/V/II.124/Doc.6 (18 October 2006), paras. 102-106; Inter-American Court of Human Rights, "Access to Justice for Women Victims of Violence in the Americas", OEA/Ser.L/V/II, Doc. 68 (20 January 2007), para. 272; and CEDAW/C/2004/I/WP.1/Rev.1 para. 12.

Specific test

61. The standard of due diligence, as applied to the responsibility of preventing arbitrary and unlawful gender-based killing by non-State actors, relies on an assessment of: (a) how much the State knew or should have known; (b) the risks or likelihood of harm; and (c) the seriousness of the harm.

62. For instance, the European Court of Human Rights established that

> For a positive obligation to arise, it must be established that the authorities knew of or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.[53]

63. In conducting this assessment with regard to killing by non-State actors, including intimate partners, the Committee on the Elimination of Discrimination against Women has sought to determine whether the State authorities had already recognized a risk of harm to the victim and/or her family members, and the seriousness of the potential harm, but had failed to act diligently to protect them.

Obligation to prevent, including by addressing discrimination and stereotypes

64. Due diligence requirements also include a focus on prevention and on root causes. This involves measures to prevent and respond to the multiple intersectional discriminations that perpetuate gender-based killings.[54]

65. In its resolution S-21/2, adopted at the twenty-first special session, the General Assembly has affirmed the State obligation to take action not only to address violence against women and girls, but also to tackle root causes of that violence. In paragraph 48 of that resolution, it affirmed that:

> Governments should give priority to developing programmes and policies that foster norms and attitudes of zero tolerance for harmful and discriminatory attitudes, including ... discrimination and violence against the girl child and all forms of violence against women, including ... trafficking, sexual violence and exploitation. This entails developing an integrated approach that addresses the need for widespread social, cultural and economic change, in addition to legal reforms.

66. States must adopt the required measures to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.[55]

67. The "duty to prevent" includes a State obligation to modify, transform and eliminate wrongful gender stereotyping in recognition of the fact that the perpetuation of harmful gender stereotypes constitutes one of the determining factors of discrimination and violence.[56] For instance, according to the Inter-American Court of Human Rights, the creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.[57]

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[53] See European Court of Human Rights, *Kontrová v. Slovakia* (Judgment), application No. 7510/04, para. 50.

[54] See, e.g., General Assembly resolution 48/104, articles 3 and 4; HRI/GEN/1/Rev.1 (1994), paras. 1, 11 and 23; and Inter-American Commission on Human Rights, Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), 19 January 2001, para. 44.

[55] See *Jessica Lenahan (Gonzales) et al. v. United States* (footnote 51 above), para. 126.

[56] See *Latin American Model Protocol* (footnote 13 above), pp. 23-25. See also Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (footnote 49 above).

[57] See, *González et al. ("Cotton Field") v. Mexico* (footnote 23 above).

Obligation to uphold non-discrimination

68. States are required to have the same level of commitment in relation to the prevention, investigation, punishment and provision of remedies for gender-based killings, as they do with regards to the other forms of violence. Institutions and mechanisms established for these purposes must be equally accessible to all.

Effective judicial remedies

69. States also have an obligation to guarantee access to adequate and effective judicial remedies for all victims and their family members when they suffer acts of violence.[58]

Other requirements

70. The entire State structure, including the State's legislative framework, public policies, law enforcement machinery and judicial system, must operate to adequately and effectively prevent and respond to gender-based killings by State or non-State actors. The Committee on the Elimination of Discrimination against Women has repeatedly insisted on the broad nature of the duty-bearers obligations, noting the obligation to investigate the existence of failures, negligence or omissions on the part of public authorities, which may have caused victims to be deprived of protection.[59]

71. The obligation of due diligence is more than the mere enactment of formal legal provisions and the State must act in good faith to effectively prevent violence against women.[60]

72. Finally, the obligation of due diligence places a high burden on the State, demanding firm legal protection and effective remedy.

Efforts versus outcomes

73. The notion of high burden warrants further elaboration as it may be seen as contradicting the fact that the obligations of due diligence are positive obligations, thus implying obligations of effort or means, rather than of results or ends.[61] In fact, these positive obligations impose a high burden on the State, including a burden of effectiveness, particularly so with respect to the protection of the right to life. This is supported by facts below.

74. Killings by State actors amount to a failure to implement both negative obligations and due diligence. The overlap between these two sets of State duties, for example, with regard to investigation, makes the distinction between results and means difficult to sustain in the context of the right to life.

75. The obligation of investigation into human rights violations is non-derogable and takes on a particularly crucial dimension when applied to the right to life. Indeed, international standards affirm that lack of investigation constitutes in and of itself a violation of the right to life, whether or not those who commit the killings are State agents. Investigations into gender-based killings, under the due diligence standard, demand a range of additional investigatory measures and inquiries into, for instance, the context or the motivation of the killers, similar to those found in the investigation of "hate crimes". If

[58] See, e.g., General Assembly resolution 63/155, paras. 11 and 14-16, "Access to Justice for Women Victims of Violence in the Americas" (footnote 51 above), paras. 23-58; Inter-American Commission on Human Rights, report No. 54/01, case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), available from www.cidh.oas.org/annualrep/2001eng/chap.6c.htm, paras. 33-34.

[59] See communication No. 47/2012, *Gonzáles Carreño v. Spain*, decision adopted on 16 July 2014.

[60] See www.un.org/womenwatch/daw/egm/vaw-gp-2005/.

[61] See, for instance, International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (judgment of 26 February 2007), para. 430; and Menno Kamminga, "Due Diligence Mania", Maastricht Faculty of Law Working Paper No. 2011/07 (4 May 2011), available from http://ssrn.com/abstract=1831045.

women or girls belong to other groups traditionally targeted or discriminated against, the overlap of risk factors must also be considered in the investigation.[62]

76. The obligation of preventing, sanctioning and having access to remedies impose equally firm obligations on the State. For instance, in *Opuz v. Turkey*, the European Court of Human Rights determined that, when authorities *are aware* of instances of grave domestic violence, it falls upon them to undertake effective action of their own motion.[63] The Court's judgment implies that, in order to fulfil Convention obligations, European Governments must aggressively pursue criminal proceedings in cases of alleged domestic violence, and such proceedings must be effective. This might require particular vigilance in situations where victims are fearful of reporting abuse, a likely possibility in domestic violence scenarios.[64]

77. Such insistence on effectiveness is not just argued with regard to richer States. For instance, the Inter-American Commission on Human Rights stated, in *Gonzalez v. the United States of America*, that it is not the formal existence of such remedies that demonstrates due diligence, but rather that they *are available* and effective.[65] Therefore, when the State apparatus leaves human rights violations unpunished and the victim's full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law.[66]

78. In conclusion, the obligation to respect and protect the right to life is a non-derogable obligation of immediate effect. To the extent that women are the victims of unlawful death in the private sphere, there is an immediate obligation placed upon the States to protect, including through prevention, investigation, sanction and reparations. The fact that these obligations are "positive" does not imply weaker obligations. Efforts-based obligations imply demonstration of effectiveness (vis-à-vis the efforts of prevention, investigation, punishment and remedies), non-discrimination in the allocation of State efforts and firm legal protection.

F. Responsibility to fulfil: violations of the right to life, and arbitrary killings, through the deprivation of socioeconomic rights

79. A gender-based intersectional analysis calls for a greater conceptual and policy-based integration between the protection of the right to life and the realization of economic, social and cultural rights.

80. The deprivation of women's life as a result of the failure by the State to realize socioeconomic rights, has been progressively analysed as falling within the remit of article 6 of the International Covenant on Civil and Political Rights.[67] This overlap applies with particular force to rights related to the minimum survival requirements (rights to health, housing, water and food).[68]

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[62] See A/71/398.

[63] See *Case of Opuz v. Turkey* (footnote 50 above).

[64] See www.womenslinkworldwide.org/files/jgo_article_caseOpuz-Turkey_en.pdf.

[65] See, Inter-American Commission on Human Rights, report No. 81/10, case 12.562, *Wayne Smith, Hugo Armendariz, et al.* (United States), 12 July 2010, para. 62; Inter-American Commission on Human Rights, report on admissibility No. 52/07, petition 1490-05, *Jessica Gonzales and Others* (United States), 24 July 2007, para. 42; "Access to Justice for Women Victims of Violence in the Americas" (footnote 51 above), para. 26; Inter-American Court of Human Rights, *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Judgment of 19 November 1999, series C, No. 63, para. 235.

[66] See Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juarez, Mexico*, OEA/Ser. L/V/II.117. Doc. 44 (7 March 2003), para. 51.

[67] The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, in her August 2016 annual report (A/71/310), lists a range of initiatives by treaty monitoring bodies adopting an inclusive understanding of the right to life in their jurisprudence.

[68] See Inga Winkler, *The Human Right to Water: Significance, Legal Status and Implications for Water*

81. In its general comment No. 6 (1982) on the right to life, the Human Rights Committee has noted that the "right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures". The Committee's position points to the interrelation and interdependence of human rights and to an understanding of the connections between the protection of the right to life and the realization of socioeconomic rights. The implication is that failure on the part of States to address, through positive measures, systemic violations of socioeconomic rights, such as malnutrition, homelessness or diseases, amount to a violation of the right to life.

82. In its landmark decision on "street children",[69] the Inter-American Court of Human Rights developed the concept of "*vida digna*" (the right to a dignified life), according to which "the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence".

83. The African Commission on Human and Peoples' Rights, in its general comment No. 3, notes that the notion of "dignified life":

> Requires a broad interpretation of States' responsibilities to protect life. Such actions extend to preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies. The State also has a responsibility to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems.[70]

84. The right to a dignified life encompasses the realization of human rights, such as access to drinkable water, sanitary facilities, adequate food, health care[71] and medicine,[72] through measures that can reasonably be expected to prevent or avoid risks to the life of groups and individuals.[73] This right also extends to the fulfilment of human rights to secure a "full, free, safe, secure and healthy life", through the rights to work, housing, education and culture.[74]

85. In practice, the integration between violation of article 6 related to the right to life, and violations of economic, social and cultural rights has taken at least two approaches.

86. The first and possibly most common has been the reliance on the due diligence negligence test of "knew or should have known". In *Sawhoyamaxa*, the Inter-American Court of Human Rights found that the failure by the State to provide access to health care facilities and the deaths that ensued resulted in a violation of the right to life. To consider whether a violation of the right to life occurred, the Court developed a two-pronged test examining whether: (a) the authorities knew or should have known about the existence of a situation posing an immediate and certain risk to the life of an individual or of a group of individuals; and (b) the necessary measures were not adopted within the scope of their authority which could be reasonably expected to prevent or avoid such risk. Under this test, the Court reasoned that the freedom of movement limitations placed on the indigenous community under these circumstances, which inhibited their ability to both practice

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Allocation (Hart Publishing, Oxford, 2012).

[69] See *Case of the "Street Children"* (footnote 64 above).

[70] See general comment No. 3 (footnote 17 above), para. 3.

[71] See *Case of the "Street Children"* (footnote 64 above), and Steven R. Keener and Javier Vasquez, "A Life worth Living: Enforcement of the Right to Health through the Right to Life in the Inter-American Court of Human Rights", *Columbia Human Rights Law Review*, vol. 40, iss. 2 (2009), pp. 595-624.

[72] See Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*, ser. C, No. 125, (17 June 2005) paras. 161-168. Available from www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf.

[73] See Inter-American Court of Human Rights, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, ser. C, No. 146 (29 March 2006), para. 160.

[74] See Committee on Economic, Social and Cultural Rights, Fact Sheet No.16 (Rev.1) (July 1991), available from www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf.

traditional medicine and to access State-sponsored medical services, were to be attributed to the State as a violation of the right to life.[75]

87. The second approach is through a focus on discrimination, the prohibition of which is regarded as having immediate effect: State parties must abolish laws, policies and practices that affect the equal enjoyment of economic, social and cultural rights and take action to prevent discrimination in public life. In 2011, the Committee on the Elimination of Discrimination against Women issued a landmark decision in *da Silva Pimentel v. Brazil*, in which it recognized that States have an immediate and enforceable human rights obligation to address and reduce maternal mortality. It stressed that limited access to quality maternal health-care services fails to address the specific needs of women and thus constitutes discrimination. The Committee further established that the right to life is violated whenever women die as a result of being denied access to quality health care services because "the lack of appropriate maternal health services has a differential impact on the right to life of women".[76] In that particular case, the Committee acknowledged that, in addition to gender-based discrimination, discrimination on the basis of race and income also affected the lack of access to quality maternal health care services,[77] resulting in a violation of the right to life.

88. Violations of the right to life stem thus not only from an intentional act of deprivation of life (murder) by the State or a non-State actor, but also from State's negligence in providing basic conditions and services that guarantee life, such as access to food, water, health services and housing, negligence which may be directly attributed to the lack of respect for the principle of non-discrimination. As highlighted below, violations of the right to life also derive from the State's deliberate denial of services.

89. The recognition of the interdependence between the right to life and socioeconomic rights is a particularly important step to protect women's right to life because of the gender-based discriminations that women and girls face when seeking to access food, health services, water, land or properties, intersecting more often than not with other discriminations on the basis of race, religion, indigenous status, gender identity or expression.

90. For the vast majority of women and girls, their human rights journey entails confronting a system of State actions and inactions, feeding and fed by systemic discrimination, resulting in violation of their rights to basic necessities and ultimately in a violation of their right to life.

91. The above also suggests that some violations of the right to life, stemming from the non-fulfilment of economic, social and cultural rights, may constitute an arbitrary killing.

92. For instance, States have extensive knowledge of the life-threatening implications of unsafe abortion practices and the consequential number of deaths resulting from this recourse. Every eight minutes, a woman in a developing nation dies from complications arising from an unsafe abortion. The World Health Organization reports that there are approximately 22 million unsafe abortions annually, resulting in 47,000 deaths. Almost all deaths and morbidity from unsafe abortion occur in countries where abortion is criminalized or severely restricted in law and/or in practice. Lower-income and poor women specifically are the most likely to resort to unsafe abortion. Legislation that creates or facilitates access to abortion does not increase their number, rather results in a reduction of mortality from unsafe practices.[78]

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[75] See *Case of the Sawhoyamaxa Indigenous Community v. Paraguay* (footnote 72 above).

[76] See Committee on the Elimination of Discrimination against Women, communication No. 17/2008, *da Silva Pimentel v. Brazil*, Views adopted on 25 July 2011.

[77] Maternal mortality is particularly problematic among low income, Afro-Brazilian and indigenous women, and women living in rural areas and in the Brazilian north and northeast. See Ministério Da Saúde (Ministry of Health of Brazil), *Uma Análise Da Desigualdade Em Saúde* (2006). Available in Portuguese from www.ans.gov.br/images/stories/Materiais_para_pesquisa/Materiais_por_assunto/relatoriodepesquisa_saude_brasil_2006.pdf.

[78] See WHO, *Safe abortion: technical and policy guidance for health systems* (Geneva, 2012), page 1.

93. The deaths of women and girls from unsafe abortion has been repeatedly linked to the right to life. Treaty bodies and special procedures mandate holders have consistently condemned countries that criminalize and restrict access to abortion, making direct links between the criminalization of abortion, maternal mortality and the right to life. Noting that such laws violate the right to life of pregnant women and other rights, the Human Rights Committee[79] and the Committee against Torture, for example, have expressed concerns about restrictive abortion laws, including absolute bans on abortion, as violating the right to life and prohibition of torture and other ill-treatment.

94. Yet some States choose to impose an absolute ban on abortion and criminalize it. Under the above analysis, the death of a woman, where it can be medically linked to a deliberate denial of access to life-saving medical care because of an absolute legal ban on abortion, would not only constitute a violation of the right to life and an arbitrary deprivation of life, but would also amount to a gender-based arbitrary killing, only suffered by women, as a result of discrimination enshrined in law.

95. Other States have established a conditional ban or created barriers to gaining access to such care where it is legally available.[80] The uncertainty surrounding the process of establishing whether a woman's pregnancy poses a risk to her life, the reticence of the medical profession in the absence of transparent and clearly defined procedures to determine whether the legal conditions for a therapeutic abortion are met, along with the threat of criminal prosecution, all have a "significant chilling" effect on doctors and the women concerned,[81] and greatly increase the likelihood of women seeking unsafe abortion and the likelihood that a substantive proportion of them will suffer lasting injuries or die. Depending on the individual circumstances of each case, one may be able to conclude that these deaths constitute an arbitrary deprivation of life.

IV. Conclusions

96. **The present report has elucidated that a gender-sensitive approach to the right to life, including to arbitrary killings, requires consideration of the impact of gender norms, identity and expression, in intersection with other identity markers, when analysing one, or all, of the following:**

(a) **The nature of the killing or the death, for example, the death penalty, femicide or death as a result of denial of essential health services;**

(b) **The forms of harm and violence (before, during and after death), predicated on an understanding that killing and death is often the outcome of a continuum of violence, including at the economic or social levels;**

(c) **The risks factors or vulnerability to killings or death of certain persons, and the (degree of) predictability of harm. This includes consideration of how certain characteristics or identities intersect with gender to place individuals at particular risk of an arbitrary killing, deprivation of life or violation of the right to life;**

(d) **The relationship between the victim(s) and the perpetrator(s);**

(e) **Access to justice, reparation and remedies before the death and afterwards for survivors. This latter group includes women as secondary victims, following violations of the right to life of relatives;**

(f) **The due diligence of States to respond and prevent killings, carry out investigations, bring perpetrators to justice and address root causes, including gender stereotypes.**

Available from www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en.

[79] See, for instance, general comment 28 (2000) on the equality of rights between men and women.

[80] See European Court of Human Rights, *R.R. v. Poland* (application No. 27617/04), judgment of 26 May 2011.

[81] European Court of Human Rights, *A, B and C v. Ireland* (application No. 25579/05), judgment of 16 December 2010.

97. Some of the key findings in the report include:

(a) Gender is an extraordinarily strong determinant of human rights enjoyment in general, and the right to life in particular. But, taken on its own, it neglects equally important determinants, resulting in ineffective efforts for prevention, investigation, accountability and justice. For instance, the report has highlighted extreme vulnerability to violations of the right to life for such groups as women and girls with disabilities, indigenous women and transgender individuals. The list is non-exhaustive;

(b) The private and the public spheres overlap and intersect, with both being constituted through choices made by States. A failure to appreciate this hides many aspects of the "continuum of violence" suffered by victims of gender-based killings, which, in turn, can make for inadequate and ineffective prevention efforts and responses;

(c) The level of *mens rea* required to demonstrate State's violation of the right to life is not only criminal intent but also negligence through acts of omission or commission, that is, a situation where the State "knew of should have known" but failed to take actions that could have prevented deaths. Such negligence may be best appreciated and evaluated with reference to intrinsic and systemic discrimination, such as gender-based discrimination, but also racial, class and others;

(d) Depending on the specific circumstances, gender-based killings by non-State actors and deaths resulting from the denial of essential services may constitute arbitrary killings;

(e) The continuing extreme exposure of women and girls to killings by their partners and by their family members demonstrates that prevention efforts taken to date are not delivering the desired concrete results. Societies, Governments and public institutions are still largely failing women and girls, particularly those belonging to socioeconomic, ethnic and racial minorities. One has to conclude that misogyny continues to prevail at all levels of societies;

98. A gender-sensitive approach is an evolving approach. One has to learn how to do it, practice doing it, be candidly reflective about one's shortcomings, try again. It keeps evolving, demanding more refined intellectual nuance, greater methodological subtlety.[82] It requires openness of the mind, clarity of objectives, and the recognition that others are likely to strengthen the approach in the months or years ahead.

V. Recommendations

A. Recommendations addressed to States

99. As part of their implementation of the universal jurisdiction principle, States must fulfill their duty to prosecute those responsible for genocide, crimes against humanity, war crimes, torture, enforced disappearances and extrajudicial, summary or arbitrary executions, including gender-based ones. To close the impunity gap regarding gender-based killings in and outside armed conflicts situations, States must investigate and prosecute these crimes, whether committed by State or non-State actors.

100. States should respect the right to life of all persons within their jurisdiction, power or effective control, whether these are within our outside a territory under their control. These include women and girls, as well as lesbian, gay, bisexual, transgender, questioning and intersex individuals, whose right to life may be particularly exposed on the basis of their gender identity or gender expression.

[82] See C. Cohn (ed.), *Women and Wars* (Cambridge, Polity Press, 2013), foreword by Cynthia Enloe.

101. To counter the continuing extreme exposure of women and girls to killings by their partners and by their family members, States must:

(a) Repeal all laws that support the patriarchal oppression of women, including laws that punish sexual relationships outside marriage, exclude marital rape from the crime of rape or grant pardon to rapists who marry their victims, and laws that criminalize adultery;

(b) Repeal all discriminatory laws that limit or otherwise impede women's ability to escape violent relationships, such as discriminatory laws governing inheritance, ownership of property or guardianship;

(c) Remove the defence of "honour" and other such mitigating factors in prosecution of a victim's relatives and engage in community outreach and public education campaigns to raise public awareness about honour-based crimes;

(d) Eliminate impunity for cases of femicide, evaluating current approaches and, on that basis, adopt corrective legal and administrative measures.

102. States should repeal laws criminalizing abortion and ensure that women do not have to undertake life-threatening clandestine abortions.

103. States should remove undue restrictions on access to safe and legal abortions that may threaten women's and girls' rights to life and health, and adopt clear regulations and guidelines on safe and legal abortion for health professionals providing abortion and post-abortion services.

104. With regard to women and girls in detention, States should review laws, criminal procedures and judicial practices to ensure that they take full account of women's backgrounds, including histories of prior abuse and mental illness. Such considerations are particularly crucial in cases involving capital punishment.

105. States should repeal laws that result in the disproportionate detention of women, such as so-called "moral crimes" or criminalization of abortion and adultery.

106. States should ensure access to effective legal representation for incarcerated women, particularly women belonging to disadvantaged minority groups and migrant or refugee women.

107. States should implement fully and expeditiously the Bangkok Rules and establish appropriate gender-specific conditions of detention.

108. States should address effectively gender stereotypes through, for example, community outreach and public education campaigns, and promote women's and girls' participation in public and political life.

109. States should recognize that, by virtue of their gender-based roles, women may be "secondary victims" of violations of the right to life. This gender-specific impact of killings must be further acknowledged, researched, made visible and responded to, including by facilitating and supporting the safety and security of secondary victims, their access to justice and reparations, as well as to mental health care.

110. Noting that on the basis of their gender identity, gender expression or sexual orientation, lesbian, gay, bisexual, transgender, questioning and intersex persons are particularly exposed to violence and killings by both State and non-State actors, States should:

(a) Immediately repeal all laws that criminalize same-sex relationships and/or forms of gender expression. This is particularly crucial in cases involving capital punishment;

(b) Address impunity for murders of lesbian, gay, bisexual, transgender, questioning and intersex persons, including by repealing all laws or policies that allow, justify or condone violence and discrimination on the basis of gender expression and sexual orientation;

(c) **Repeal laws that permit intrusive and irreversible interventions, such as genital-normalizing surgeries or "conversion" therapies;**

(d) **Adopt in law transparent and accessible gender-recognition procedures and abolish preconditions such as sterilization and other harmful procedures;**

(e) **Ensure that judicial and prison authorities, when deciding allocation of trans-gender person to either a male or female prison, do so in consultation with the prisoner concerned and on a case-by-case basis. Safety considerations and the wishes of the individual must be paramount.**

111. **With regard to data collection, States should implement the recommendations of the Special Rapporteur on violence against women, its causes and consequences:**[83]

(a) **Collect and publish data on femicide and other forms of violence against women;**

(b) **Establish a femicide watch or observatories on violence against women;**

(c) **Cooperate to establish and implement a common methodology for the collection of comparable data and the establishment of a femicide watch.**

112. **States should undertake or support further research to assess the extent to which women on death row have been victims of discrimination, including gender-based violence.**

113. **Similar measures to those set out in paragraphs 63 and 64 above should be adopted with regard to violence against and killings of lesbian, gay, bisexual, transgender, questioning and intersex persons, and those on death row.**

114. **In addition, hate crimes statutes should be revised to include gender identity, gender expression and sexual orientation if and where this is not the case.**

115. **States should include violence and killings against women and girls, and on the basis of gender identity and gender expression, as an integral part of refugee status determination and of the implementation of their non-refoulement obligations.**

116. **States should develop mechanisms to analyse whether any arms being assessed for approval for transfer, as well as the granting of licenses on production, will facilitate or contribute to gender-based violence or violence against women by the recipient, in accordance with the obligation on risk assessment processes of the Arms Trade Treaty.**

117. **States should facilitate or undertake increased research on the gendered effects of the use of explosive weapons in populated areas and support international efforts to develop a political commitment to end such use in order to preventing humanitarian suffering.**

118. **States should take concrete measure to ensure a gender-sensitive approach is adopted in respect to:**

(a) **The training of all those involved in the investigation and prosecution of gender-based killings;**

(b) **Reparations, taking into account the gender-specific impact on, harm caused to and suffering of the victims of gender-based violence;**

(c) **Programmes to prevent gender-based killings, ensuring that access to justice, protection measures and legal, social and medical services are designed and implemented in a manner that ensures inclusion and accessibility for all, including those particularly vulnerable to such killings.**

119. **Civil society plays a crucial role in monitoring, analysing, educating, preventing and addressing gender-based violations of the right to life. States should respect and protect human rights defenders and organizations involved in such activities and**

[83] See A/71/398, paras. 75-83.

support financially and strengthen cooperation with individuals and organizations that have experience in documenting gender-based crimes and working with victims of these crimes.

B. Recommendations addressed to the United Nations and civil society

120. **United Nations bodies and civil societies should, in their standard-setting, policies or programmatic interventions:**

(a) **Reaffirm the interdependence of the right to life with economic and social rights;**

(b) **Clarify that the right to life under article 6 of the International Covenant on Civil and Political Rights imposes obligations for the State to address socioeconomic and other systemic factors leading to arbitrary deprivation of life through the adoption of strategies and independent monitoring and complaints procedures;**

(c) **Uphold the notion that violations of the right to life may result from criminal intent but also from acts of omission or commission, including those grounded in systemic discrimination;**

(d) **Clarify that gender-based killings by non-State actors and death resulting from the deliberate denial of essential life-saving services may constitute arbitrary killings;**

(e) **Ensure that the right to life is interpreted consistently with the right to substantive equality and non-discrimination.**

121. **The Special Rapporteur undertakes to continue to engage actively with States and other relevant stakeholders in order to improve the effectiveness of their and her interventions, including with regard to gender-based killings.**